

ADVISORY OPINION 2005-002

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

May 11, 2005

Hon. Donald H. Vish
Middleton & Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202

Dear Mr. Vish:

This is in reference to your April 11, 2005 letter requesting an advisory opinion regarding whether the monetary and in-kind contributions made to the post-election legal affairs of a candidate for the Kentucky legislature are regulated by KRS Chapter 121, and if so how such contributions are regulated? You explain that Dana Seum Stephenson was a candidate for the 37th senatorial district in Jefferson County during the 2004 regular election. After the election, the Jefferson Circuit Court ruled Ms. Stephenson was ineligible for office under KRS 118.176.

You explain that Ms. Stephenson then chose to take her case to the Kentucky State Senate. A legal action which attempted to enjoin Ms. Stephenson from prosecuting her case before the Senate was unsuccessful. Upon the Senate's seating of Ms. Stephenson, Ms. Virginia Woodward, Ms. Stephenson's opponent, filed a separate action in the Franklin Circuit Court seeking to enjoin Ms. Stephenson from acting as a Senator for the 37th District. The court granted a temporary injunction prohibiting Ms. Stephenson from exercising any senatorial duties. The Kentucky Supreme Court upheld the injunction and remanded the case for further proceedings.

Regarding the action filed in Franklin Circuit Court, you ask the following questions:

1. Since the election ended on November 2, 2004 are monetary or in-kind contributions to fund the defense of the Franklin Circuit Court case seeking to enjoin Ms. Stephenson from prosecuting her election contest before the state senate under KRS Chapter 121 “campaign contributions” or otherwise regulated by Chapter 121?
2. Since the senate seated Ms. Stephenson on January 7, 2005, effectively ending any campaign for office, are monetary or in-kind contributions to pay legal expenses caused by Ms. Woodward’s suit “campaign contributions” or otherwise regulated by KRS Chapter 121?
3. Since the Franklin Circuit Court enjoined Ms. Stephenson on January 14, 2005 from exercising the rights and duties of a state senator, are monetary or in-kind contributions to her legal defense “campaign contributions” or otherwise regulated by KRS Chapter 121?

In short, the answer to each of your questions is yes, all monies paid or goods and paid services provided toward the legal expenses of Dana Seum Stephenson’s continuing pursuit of the office of Kentucky State Senator for the 37th District are contributions within the meaning of and regulated under KRS Chapter 121. An analysis of the applicable statutory law is provided below.

KRS 121.015(8) defines candidate,” within the meaning of KRS Chapter 121, as “any person who has received contributions or made expenditures, has appointed a campaign treasurer, or has given his consent for any other person to receive contributions or make expenditures with a view to bringing about his nomination or election to public office, except federal office.” Since any monies received or goods or paid services rendered to Ms. Stephenson for her legal expenses as you describe would be received with a view to bringing about her election to public office. This statement is accurate since it is Ms. Stephenson’s clear objective to take office as Senator for the 37th District of Kentucky despite a court ruling that she was ineligible to serve.

KRS 121.015(6) defines “contribution” to include the in-kind donation of or payment by a person other than the candidate for goods and services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election. Exempted from the definition of contribution are services provided without compensation by persons volunteering all or a portion of their time on behalf of a candidate. As stated in summary above, this definition of “contribution” would include monies paid or goods and paid services provided toward the legal expenses of Dana Seum Stephenson. Since such funds

are contributions under KRS 121.015(6), they are similarly subject to all relevant contribution limits. *See* KRS 121.150.

Under KRS 121.150(1), no contribution may be made on behalf of a candidate except through the designated treasurer. KRS 121.150(20) expressly provides that a candidate may solicit and accept contributions after the date of an election to defray necessary expenses associated with election contests, recounts, and recanvasses of a specific election, complaints regarding alleged campaign finance violations or other legal actions pertaining to a specific election to which a candidate is a party. Therefore, although nothing prohibits a candidate from self-funding their own legal expenses in actions relating to their election to state office, any contributions received by the candidate relating to a legal action pertaining to a specific election and to which the candidate is a party, may only be accepted through the candidate's designated campaign treasurer.

This advisory opinion represents the Registry's consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry's staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Members
Sarah M. Jackson, Executive Director